**IN T**HE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
**CRIMINAL APPEAL NO.827 OF 2007**

Anil Umrao Gote,
age 58 years, permanently
residing at Dhule,
District Dhule. .... Appellant

- Versus -

1. The State of Maharashtra

2. Central Bureau of Investigation,
having its regional office
at Colaba, Mumbai-400 005. .... Respondents

**AND**

**CRIMINAL APPEAL NO.830 OF 2007**

Mohd. Chand Mulani,
Age 63 years, Occ: Retired,
residing at House No.767,
Near Aroh Mangal Karyalaya,
Datta Nagar, Ambegaon,
Taluka Haveli, Dist: Pune. .... Appellant

- Versus -

1. State of Maharashtra

2. Central Bureau of Investigation,
Regional Office at Colaba,
Mumbai-400 005. .... Respondents

Shri P.M. Pradhan, Advocate, for the Appellant
in Criminal Appeal No.827 of 2007.

Sarvasri A.P. Mundargi, Senior Advocate, with
Indrajeet Joshi, Advocate, for the Appellant
in Criminal Appeal No.830 of 2007.

Ms Usha V. Kejriwal, Addl. Public Prosecutor,
for the Respondent No.1 in both the Appeals.

Sarvasri Raja Thakare & A.M. Chimalkar, Special
Public Prosecutors, for the Respondent No.2 in

both the Appeals.

**CORAM:** R.M.S. KHANDEPARKAR &
S.R. SATHE, JJ.

**DATED:** OCTOBER 04, 2007

**ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):**

1. Heard. Admit. Learned Advocates appearing on behalf of the respondent Nos.1 and 2 respectively waive service. By consent, heard forthwith.

2. Since both the appeals arise from the same order and involves same questions of facts and law, they were heard together and are being dispose of by this common judgment.

3. In both these appeals, the appellants are challenging the order dated 6-8-2007 passed by the Special Judge (under MCOC Act), Pune in Special Case No.2 of 2003. By the impugned order, the trial Court has decided to re-frame the charges against all the accused in the said case and it is observed that such decision has been arrived at in the light of the observations made by this Court in its order dated 17-7-2007, passed in Criminal Writ Petition No.2744 of 2006.

4. Few facts relevant for the decision are that the

appellants are the accused along with other accused persons in Special Case No.2 of 2003 arising out of C.R.No.135 of 2002, registered by the Bund Garden Police Station, Pune. The complaint relates to alleged offences in relation to fake stamps worth crores of rupees. On chargesheet being filed, the learned Special Judge, Pune framed the charges against the accused persons in the said case on 28-6-2007. Meanwhile, Criminal Writ Petition No.2744 of 2006 came to be filed by one of the accused, namely, Shri Dilip Pandurang Kamath and the same was disposed of on 17-7-2007 by the order referred to above. While disposing the said writ petition, it was observed by this Court that the learned Special Judge was expected to take up suo motu the matter for re-framing of the charges, in accordance with the provisions of law, bearing in mind the observations made in the said order. It was also observed that such observations would not affect the proceedings which have already been concluded in respect of some of the accused in the said case. When the matter came up before the learned Special Judge, the prosecution insisted for re-framing of the charges against all the accused, bearing in mind the said observations by this Court, which was objected to by the appellants and some other accused persons, the impugned order came to be passed.

5. The appellants challenge the impugned order on the

ground that the charges which were framed by the learned Special Judge on 28-6-2007 were not challenged by the prosecution by filing appeal against the same and they had attained finality during the pendency of the proceedings before the trial Court in as much as that those charges were framed in exercise of powers under Section 228 of the Criminal Procedure Code, 1973 (for short, Cr.P.C.) and pursuant to that the plea of the accused/appellants was already recorded and that therefore, the trial Court is not empowered to re-frame or alter the charges. Besides, the charges which were framed on 28-6-2007 were framed after giving fair opportunity to all the parties of submitting draft charges and after hearing the parties and, therefore, sufficient opportunity was given to the prosecution in the matter of framing of the charges. It is further sought to be contended that the observations made in the order passed by this Court on 17-7-2007 related to the case of the petitioner Dilip Kamath in Criminal Writ Petition No.2744 of 2006 and it does not relate to the appellants or any other accused person. According to the appellants, there was no direction issued by this Court to re-frame the charges in respect of all other accused persons, and to that extent, the trial Court has misconstrued the order passed by this Court. It is then sought to be contended on behalf of the appellants that in terms of Section 362 of the Cr.P.C., the trial Court

has no power to review the order passed in relation to the framing of charge under Section 228 of the Cr.P.C.. It is then contended that once an order is passed and charges are framed in exercise of powers under Section 228 of the Cr.P.C., then it is to be presumed that the same has been done on application of mind by the concerned Court as the proceedings which precede the framing of charges are under Section 227, which involves hearing of the parties and the Court coming to a conclusion about the need of framing of the charges in relation to offences alleged against the accused persons; thereafter it cannot be said that there was non-application of mind by the trial Court. It is then contended that the charges as framed on 28-6-2007 are still in force and have not been challenged by the prosecution nor it has been set aside by this Court in the said writ petition and, therefore, unless the said order, which attained finality, is disturbed or set aside, question of re-framing the charges does not arise. It is also sought to be contended that the order dated 17-7-2007 passed by this Court in Criminal Writ Petition No.2744 of 2006 nowhere makes reference to any accused other than Dilip Kamath and, therefore, the learned Special Judge was not justified in applying the observations made in the said order to the cases of the other accused persons, including the appellants. It is lastly submitted that in any case, the order does not

disclose application of mind by the learned Special Judge for re-framing of the charges in relation to the appellants herein as the impugned order nowhere refers to any of the charges already framed against the appellants and does not point out defect, if any, therein which would require to be cured or any irregularity in framing of those charges against the appellants and without such an exercise it was not permissible for the learned Special Judge to order re-framing of charges in relation to the appellants, even assuming that the observations made in the order dated 17-7-2007 would apply to the case of the appellants.

6. On behalf of the respondents, on the other hand, it is submitted that there cannot be any dispute about the proposition that before proceeding to re-frame the charges, the learned Special Judge has to ascertain as to whether the charges already framed against the appellants disclose any defect or error which requires to be corrected and only thereupon the charges will have to be re-framed, if necessary. According to the respondents, such an exercise is to be undertaken only after the impugned order has been passed and, therefore, no fault can be found with the impugned order to that extent. It is further submitted on behalf of the respondents that the observations made in the order

dated 17-7-2007 cannot be said to be restricted to the case of Dilip Kamath and they are also applicable to the cases of the other accused including the appellants. According to the respondents, the law on the point that the Court can re-frame the charges at any stage of the proceedings is well settled and, therefore, all the contentions which are sought to be raised on behalf of the appellants are devoid of substance.

7. As far as the last ground of challenge to the impugned order is concerned, which pertains to failure on the part of the learned Special Judge to consider each of the charges framed against each of the accused separately and to ascertain whether the charges disclose any error or defect which requires to be cured and on that ground the charges need to be re-framed, there does not appear to be serious controversy between the parties. Indeed, it cannot be disputed that the Court is empowered to re-frame the charges at any stage of the proceedings and the law in that regard is well-settled. However, before proceeding to re-frame the charges, it is always necessary for the concerned Court to apply its mind on the point as to whether the charge already framed is defective or disclose any error and further to ascertain to what extent the defect or the error is required to be cured or corrected. This exercise undoubtedly is permissible to be done by every Court suo

motu. That apart, the provision of law comprised under Section 464(2) of the Cr.P.C. clearly provides that the appellate or revisional Court finding any error or omission or irregularity in the charge can direct a new trial to be had upon a charge to be framed in whatever manner it thinks fit. This apparently discloses that even after conclusion of the trial at the original stage, the appellate Court can order re-framing of the charge and on that count even order re-trial. The intention of the legislature is, therefore, clear that it is not only that the accused should get fair and proper trial but at the same time, the case of the prosecution, if needs to be considered, should not be ignored without proper opportunity being afforded for adjudication in that regard. This being the intention of the legislature, it cannot be heard to say that even when the matter is at the trial stage and if the Court finds that the charge which is framed contains any error or defect, that it cannot be re-framed or that the defect cannot be cured or corrected. Being so, the power of the Court to re-frame the charge moment any defect in the charge is pointed out to the Court, cannot be denied to the Court.

8. Viewed from the above angle, if one peruses the impugned order, the appellants are justified in contending that the Court below could not have jumped to

the conclusion about the need for re-framing of the charges in respect of each and every accused without ascertaining as to whether the charges framed against the accused disclose any defect or error which is required to be cured and corrected by re-framing the charges. Such an exercise is expected from the lower Court before arriving at the conclusion that the charges against the appellants need to be re-framed. The impugned order to that extent certainly cannot be sustained.

9. The contention on behalf of the prosecution that such an exercise is permissible after passing of the impugned order cannot be accepted. In fact, the contention, if accepted, would amount to putting the cart before the horse. Once the Court below has arrived at the finding that it has decided to re-frame the charges, question of considering whether there is a need to re-frame the charges or not does not arise at all. Such an exercise was required to be made prior to arriving at the said decision.

10. As regards the other contentions sought to be raised on behalf of the appellants, we do not find any substance therein. Merely because, no appeal was filed against the charges framed on 28-6-2007, that cannot come in the way of the trial Court in re-framing the

charges in case the defect or error in the charges is pointed out to the Court.

11. As far as Section 228 of the Cr.P.C. is concerned, it nowhere prohibits or bars re-framing of the charges framed against the accused persons. The contention that charge once framed, after hearing the parties, would give finality to the stage of framing of the charge, cannot be accepted. The framing of charge is in the interest of the accused to enable the accused to know the substance of accusation against the accused person in order to enable him to put forth his case with reference to the allegation against him by the prosecution and for the advantage of the prosecution to be aware of the nature of evidence which is required to be produced on record in order to establish the accusation against the accused. It does not decide any right or interest of the accused vis-a-vis the accusation made against him/her. It is merely a step in the proceedings against the accused to specify the allegation against the accused person for enabling the prosecution to lead evidence and allowing the accused to put forth his say in the matter. That being an interlocutory stage in the proceeding of a criminal trial, mere framing of charge against the accused person does not decide any right or interest vis-a-vis the offence alleged to have been committed, and therefore,

it cannot be said that framing of charge would attain finality once such charge is framed in exercise of powers under Section 228 of the Cr.P.C.. On the contrary, as already observed above, the specific provision comprised under Section 464(2) would disclose the intention of the legislature that charges are essentially required to be framed not only for the benefit of the accused but also to make it known to the prosecution as to the basic ingredients of the offence which are to be established by the prosecution in order to bring home the accusation against the accused. The expression "hearing as aforesaid" which is found in Section 228 of the Cr.P.C. refers to the proceedings in relation to the discharge of the accused in cases where the materials placed before the Court do not reveal sufficient cause for proceeding further against the accused person. It does not amount to debar the Court from exercising its power to re-frame the charges against the accused person in case where the occasion for re-framing arises.

12. In the facts and circumstances of the case, therefore, it is not necessary to consider the other points which are sought to be raised nor as to whether the observations made in the order dated 17-7-2007 are exclusively in relation to the case of Dilip Kamath or same would lay down guide-lines for the trial Court in

relation to the other accused person or not. Suffice to observe, that both the appeals succeed on the limited ground, that is, on account of failure on the part of the learned Special Judge to take into consideration whether the charges already framed in relation to the appellants and the other accused person disclose any error or defect therein which would require re-framing of those charges.

13. Hence, the impugned order to the extent it decides to re-frame the charges without considering whether the charges framed against all the accused disclose any defect or error therein is hereby set aside and the matter is remanded to the trial Court to decide the said aspect before proceeding to re-frame the charges. The appeals accordingly stand disposed of with no order as to costs.

(S.R.Sathe, J.) (R.M.S.Khandeparkar, J.)

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